

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

BRITTNEY MCDOUGLE, INDIVIDUALLY, ET AL.

PLAINTIFF

VS.

CIVIL ACTION NO. 3:15-cv-350-CWR-FKB

NESHOPA COUNTY, MISSISSIPPI, ET AL.

DEFENDANTS

**NESHOPA COUNTY DEFENDANTS' MOTION TO
AMEND SETTLEMENT AGREEMENT DUE TO
PLAINTIFFS' BREACH OF CONFIDENTIALITY PROVISION**

COME NOW Defendants Neshoba County, Mississippi, Sheriff Tommy Waddell, in his official capacity, and Jailers Amanda Monk, Evelyn McBeath, Harvey Hickmon, Burton O'Berry, Jamie Hutchinson, and Joey Curry, in their individual and official capacities ("Neshoba County Defendants"), by and through counsel, and file this their Motion to Amend Settlement Agreement Due to Plaintiffs' Breach of Confidentiality Provision, and in support would show as follows:

1. On November 15, 2016, the Court conducted a settlement conference, at which time these Defendants entered into a proposed settlement agreement with the Plaintiffs as to all claims against them.¹

2. As a condition of the aforementioned settlement agreement, the parties agreed to keep "the fact of *and* the terms of the settlement" confidential. *See* Settlement Agreement, Exh. "A."

3. On December 14, 2016, the Neshoba Democrat newspaper in Philadelphia, Mississippi, published an article reporting the following:

A 'confidential settlement' has been reached in a \$10 million federal wrongful death lawsuit against the Neshoba County Sheriff's Department and the Philadelphia Police Department on behalf of the family

¹ The proposed settlement reached between the Plaintiffs and Neshoba County Defendants must still be approved by the Neshoba County Chancery Court because the Plaintiffs include three minors and the estate of the decedent, Michael D. McDougale, Sr.

of Michael D. McDougale Sr., who died while in custody of the Neshoba County Jail in 2014, **an attorney for the family confirmed.**

Carlos E. Moore of the Moore Law Group in Grenada confirmed that a confidential settlement had been reached.

See Neshoba Democrat Article, 12/14/16, Exh. “B” (emphasis added). The article went on to recite certain allegations set forth in Plaintiffs’ original complaint, including the allegation that “while in handcuffs, McDougale was ‘beaten and tasered’ by John Does 2-6” – an allegation that was shown through the discovery process to be completely unsubstantiated. The only source in the article who disclosed that a settlement had been reached was Plaintiffs’ counsel, Carlos Moore.² Moore’s disclosure to the media is a direct violation of the confidentiality provision of the settlement agreement between the parties.

4. Moore subsequently posted the following message to his public Facebook page regarding the settlement agreement reached between the parties:

I wish we could bring back the dead but I am happy we were able to get a confidential settlement for the family of Michael McDougale who was found dead in the Neshoba County jail after being there for a mere 8 hours.

See Moore Facebook Page, Exh. “C.” Moore also posted a link to the aforementioned Neshoba Democrat article. *Id.* These social media posts also violate the parties’ confidentiality agreement.

5. Plaintiffs’ counsel has attempted to create the false impression that the Neshoba County Defendants have admitted to some sort of wrongdoing and have agreed to pay a large sum of money to settle Plaintiffs’ “\$10 million federal wrongful death lawsuit” against them, which is

² Both Wade White, the attorney for the Neshoba County Board of Supervisors, and James Young, mayor of the City of Philadelphia, declined to comment when reached by the Neshoba Democrat due to the parties’ agreement to keep the fact of and terms of the settlement confidential.

not the case. These Defendants have adamantly denied any liability whatsoever for the death of Michael D. McDougle, Sr., and their motion for summary judgment as to all claims against them was still pending at the time of the settlement conference. The settlement reached by these Defendants was a good faith compromise in an effort to curb further defense costs and eliminate any limited exposure.

6. Plaintiffs' counsel's disclosure of the fact of the settlement to the news media and on social media cannot be undone, and this breach effectively renders the confidentiality provision of the settlement agreement between the parties void.

7. Accordingly, these Defendants respectfully request the Court to amend the settlement agreement by nullifying the confidentiality provision in full so that they may publicly discuss the settlement and the terms thereof as it pertains to these Defendants.

8. Counsel for these Defendants has conferred with counsel for Plaintiffs, and Plaintiffs oppose the relief requested.

9. Due to the nature of this motion, these Defendants respectfully request the Court to waive any requirement under the local rules for a separate memorandum of authorities.

WHEREFORE, PREMISES CONSIDERED, Neshoba County, Sheriff Tommy Waddell, Amanda Monk, Harvey Hickman, Evelyn McBeath, Joey Curry, Jamie Hutchinson, and Burton O'Berry respectfully request the Court to grant their Motion to Amend Settlement Agreement and to nullify the confidentiality provision agreed upon by the parties at the settlement conference as to these Defendants. These Defendants further request any additional relief deemed proper by the Court.

Respectfully submitted, this the 5th day of January, 2017.

SHERIFF TOMMY WADDELL, AMANDA
MONK, EVELYN MCBEATH, HARVEY
HICKMAN, BURTON O'BERRY, JAMIE
HUTCHINSON, JOEY CURRY, AND NESHOPA
COUNTY, MISSISSIPPI

BY: /s/ Steven J. Griffin
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CERTIFICATE OF SERVICE

I, Steven J. Griffin, of counsel for the Neshoba County Defendants do hereby certify that I
have this day served by United States mail a true and correct copy of the above and foregoing
pleading to:

Carlos Moore, Esq.
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***Attorneys for City of Philadelphia, Chief Grant Myers, Brad Crockett, Eric
Lyons, and Brandon Pope***

THIS, the 5th day of January, 2017.

/s/ Steven J. Griffin